

1 **UNITED STATES DISTRICT COURT**
2 **DISTRICT OF NEVADA**

3 Judith Scrase,

Case No.: 2:22-cv-01207-JAD-DJA

4 Plaintiff

5 v.

**Order Adopting Amended Report and
Recommendation to Dismiss with Leave to
file a Second Amended Complaint**

6 Richard and Edna Scrase,

[ECF Nos. 10, 11, 12, 13, 14]

7 Defendants

8 A few months ago, the magistrate judge screened Judith Scrase's complaint and
9 recommended that it be dismissed with prejudice and that the plaintiff's motion to have pro bono
10 counsel appointed to represent her be denied as moot.¹ That recommendation was based
11 primarily on the magistrate judge's finding that Scrase's claims are all time barred by their
12 respective statutes of limitation.² The plaintiff timely objected to that recommendation,
13 explaining that she neglected to include tolling allegations, which she believes would make her
14 claims timely.³ So I referred this matter back to the magistrate judge to reconsider the report and
15 recommendation in light of the plaintiff's tolling argument.

16 The magistrate judge has reconsidered his report and recommendation in light of this
17 additional information. In an amended report and recommendation, he concludes that plaintiff's
18 objection and addendum show that she could possibly amend her complaint to include facts
19 demonstrating that the statute of limitations should be tolled such that her claims should pass
20 screening, rendering amendment not futile.⁴ So he revises his recommendation to one for

21 _____
22 ¹ ECF No. 10.

² *Id.*

23 ³ ECF No. 11.

⁴ ECF No. 13 at 1.

1 dismissal without prejudice and with leave to amend.⁵ He further recommends that the
 2 plaintiff's objections to the original report and recommendation be sustained.⁶

3 Plaintiff filed an objection to the amended report and recommendation, too.⁷ She does so
 4 to provide the court with "additional facts in support of [her] objection to the statute of
 5 limitations running on February 25, 2016"⁸ and to provide additional assurances that she has
 6 standing to bring her claims.⁹ Because the magistrate judge recommends that Scrase have
 7 another opportunity to amend her complaint, the more proper vehicle for that additional
 8 information is in the ultimate amended complaint that Scrase will file. That additional
 9 information does not undermine the magistrate judge's amended recommendation, nor is it
 10 necessary for this court to adopt that recommendation.

11 Having reviewed the amended report and recommendation and considered all of Scrase's
 12 filings related to her claims, I find good cause to adopt the amended recommendation, and I do.

13 IT IS THEREFORE ORDERED that the magistrate judge's original report and
 14 recommendation [ECF No. 10] is **REJECTED**, plaintiff's objections to it [ECF Nos. 11, 12]
 15 are **SUSTAINED**,¹⁰ the magistrate judge's amended report and recommendation [ECF No.
 16 13] is **ADOPTED**, and plaintiff's objection to it [ECF No. 14] is **OVERRULED**. The
 17 amended complaint is dismissed without prejudice and with leave to file a second amended
 18

19 ⁵ *Id.* at 12.

20 ⁶ *Id.*

21 ⁷ ECF No. 14.


22 ⁸ *Id.* at 1 (cleaned up).

23 ⁹ *Id.* at 2.

¹⁰ This ruling does not affect the magistrate's order denying appointment of counsel, ECF No. 10, which is combined in the same document with the original (and now rejected) report and recommendation. That order stands.

1 **complaint. The plaintiff has until July 12, 2023, to file a second amended complaint that**
2 **contains her detailed and factual tolling and standing allegations. If she fails to file a**
3 **proper second amended complaint by this deadline, this action will be closed without**
4 **further prior notice.** Plaintiff is advised that a second amended complaint replaces the first
5 amended complaint, so it must be complete in itself without reference back to an earlier version
6 of the complaint. The second amended complaint must be titled “Second Amended Complaint”
7 and it must be filed on the Court’s complaint form.

8 **The Clerk of Court is directed to SEND** the plaintiff a copy of this court’s form (non-
9 prisoner) complaint for a civil case.

10
11 
12 U.S. District Judge Jennifer A. Dorsey
13 Dated: June 12, 2023
14
15
16
17
18
19
20
21
22
23